EVIDENCE—HEARSAY DECLARATIONS OF PEDIGREE.—In this case the question became of importance as to whether certain persons residing in England were the heirs of a deceased beneficiary under a certain contract entered into between defendant and her deceased husband. To prove that the beneficiary was dead, evidence was offered that her brother had received funeral cards, and his family, letters, from members of her family, informing him of her death. *Held,* that the evidence was admissible. *Fearnley* v. *Fearnley* (1908), — Colo. —, 98 Pac. 819.

The evidence introduced was hearsay, but says the court, hearsay information of the death of a person, derived from the immediate family of deceased, is sufficient, prima facie, to establish that fact. It has long been recognized that proof of pedigree is an exception to the rule excluding hearsay evidence. 9 ENC. EV. 738; 2 WIGMORE, EVIDENCE, § 1480. Furthermore, it is unquestioned that the above exception to the hearsay rule includes the fact of birth and death. 9 ENC. EV. 738; 2 WIGMORE, EVIDENCE, § 1500; 1 GREENLEAF, EVIDENCE, Ed. 16, p. 202; *Du Pont* v. *Davis,* 30 Wis. 170; *Anderson* v. *Parker,* 6 Cal. 197. Numerous cases, however, have established the rule that hearsay evidence in pedigree cases is never admissible except to prove the declarations of deceased persons. *White* v. *Strother,* 11 Ala. 720; *State* v. *Trusty,* 122 Iowa 82; *Greenleaf* v. *Dubuque & Sioux City R. R.,* 30 Iowa 303; *People* v. *Mayne,* 118 Cal. 516; *Harland* v. *Eastman,* 107 Ill. 538; *State* v. *Miller,* 71 Kan. 200; *Dupoyster* v. *Gagani,* 84 Ky. 403. In the present case, the declarants residing in England were still alive at the time of the trial, so that the admission of the evidence would appear to be in direct conflict with the cases just cited. On the other hand, the declarants were without the jurisdiction of the court, and in similar cases the rule has sometimes been laid down, that the declarations, if otherwise competent, are admissible. *Young* v. *Shulenberg,* 165 N. Y. 385; *Campbell* v. *Wilson,* 23 Tex. 253; *Thompson* v. *Woolf,* 8 Or. 463. Since the ground of admission of hearsay evidence in pedigree cases is based upon the necessity principle, and necessity exists when the declarant is without the jurisdiction of the court, the rule stated in these latter cases would appear to be more in accord with justice.

EXECUTION—SALE—INADEQUACY OF PRICE—SETTING ASIDE.—Appeal from a decree in equity setting aside a sheriff's sale of land on execution issued from the circuit court, pursuant to a transcript of a justice's judgment, the process issued thereon, and the return of the constable endorsed on such process, which transcript had been filed in the office of the clerk of the circuit court as required by statute. The constable's return, as shown by the transcript, recited that the execution debtors had no "personal" within the county from which the judgment could be made. Accordingly, the transcript was filed in the circuit court and land was levied on to satisfy the judgment; upon the sale this land, worth about $20,000, was sold for $132.04. The execution debtor, who is the complainant in the principal case, filed his bill to set aside the sale before the period within which he might have

redeemed the land had expired. *Held,* that the sale should not have been set aside; that as to all defects in the proceedings, complainant had a remedy at law; that mere inadequacy of consideration will not justify setting aside a sheriff's sale; and that the omission of the word "property" after "personal" in the constable's return, as shown by the transcript, was not fatal. (VICKERS, HAND, and CARTER, JJ., dissented.) *Skakel* v. *Cycle Trade Publishing Co. et al.* (1909), — Ill. —, 86 N. E. 1058.

The rule seems to be well settled in this country (the dissenting opinion admits this) that mere inadequacy of consideration is not sufficient to set aside an execution sale. 2 FREEMAN, EXECUTIONS, Ed. 3, § 304 i; *Execution,* CENT. DIG., § 703; *Odell* v. *Cox,* 151 Cal. 70, 90 Pac. 194; *Jonas* v. *Weires et al.,* 134 Iowa 47, 111 N. W. 453; *Hollister* v. *Vanderlin,* 165 Pa. St. 248, 44 Am. St. Rep. 657. And the presumption that the sale was regular, and that there was no fraud, will be strengthened by the fact that the person whose land has been sold on execution had a right of redemption and failed to exercise that right. Where the only objection to a sale on execution is that the consideration was inadequate, and there was a right of redemption, the sale will not be set aside. *Griffith* v. *Milwaukee Harvester Company,* 92 Iowa 634, 54 Am. St. Rep. 573. Some courts hold that execution sales may be set aside where gross inadequacy of consideration is coupled with material defects of process, or other circumstances tending inequitably to prejudice the rights of the execution debtor, such as failure to give him notice of the time and place of sale, collusion, etc. *Roseman et al.* v. *Miller,* 84 Ill. 297; *Bullen* v. *Dawson,* 139 Ill. 633, 29 N. E. 1038; *Flint* v. *Phipps,* 20 Or. 340, 25 Pac. 725, 23 Am. St. Rep. 124; *Allen* v. *Clark,* 36 Wis. 101. But in *Power* v. *Larabee,* 3 N. D. 502, 44 Am. St. Rep. 577, it was held that where the consideration received on an execution sale was grossly inadequate, and where there had been gross departures from the mode prescribed by statute for conducting such sales, still such a sale could not be set aside by the courts for the reason that the law gave the party a method of protecting himself by redemption if he saw fit to avail himself of it. In the execution sale involved in the principal case, the complainant had notice of the proceedings; he might have taken advantage of any irregularities by objection at law, but he failed to do so. The mere failure to write "property" after "personal" would not appear to seriously prejudice his rights. Accordingly, it would seem that the majority of the court were justified in the conclusions reached by them, and in holding that the execution sale should not have been set aside.

INSURANCE—EXCEPTION IN FIRE INSURANCE POLICY—"COTTON IN OPEN CARS."—The plaintiff railway had a policy of insurance on cotton in bales "in depots, on platforms and on the ground adjacent to the platforms, and in transit." The policy expressly stated: "It is understood and agreed that cotton in open cars is not covered by this policy." To make room on the platform the railway company loaded an open car with cotton, which car was not to leave for from twelve to twenty-four hours. It was at all times